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October 12, 2000

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

VIA HAND DELIVERY

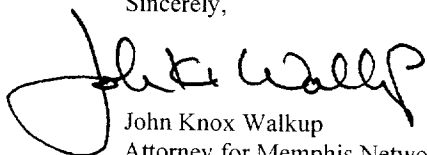
RE: Application of Memphis Networx, LLC for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunication Services and Joint Petition of Memphis Light, Gas & Water Division, a Division of the City of Memphis, Tennessee ("MLGW") and A&L Networks-Tennessee, LLC ("A&L") for Approval of Agreement between MLGW and A&L regarding Joint Ownership of Memphis Networx, LLC; Docket No. 99-00909 - Motion to Show Cause - Violation of Protective Order

Dear Mr. Waddell:

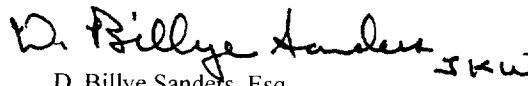
Enclosed for filing are an original and thirteen (13) copies of the Motion to Show Cause - Violation of Protective Order.

Thank you very much for your consideration.

Sincerely,



John Knox Walkup
Attorney for Memphis Networx, LLC
and A&L Networks-Tennessee, LLC



D. Billye Sanders, Esq.
Attorney for Memphis Networx, LLC
and Memphis Light, Gas & Water Division

Enclosures

cc: Parties of Record
J. Maxwell Williams, Esq.
Ward Huddleston

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

RECEIVED
REGULATORY AUTHORITY
100 OCT 12 PM 3 48
EXECUTIVE SECRETARY

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATION SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT, GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW"), A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC.)

DOCKET NO. 99-00909

**MOTION TO SHOW CAUSE -
VIOLATION OF PROTECTIVE ORDER**

Come now MEMPHIS NETWORK, LLC ("Applicant") and MEMPHIS LIGHT, GAS AND WATER DIVISION, and A&L NETWORKS-TENNESSEE, LLC ("Joint Petitioners") and move the Tennessee Regulatory Authority for an order directing Intervenor Time Warner Communications of the Mid-South, Time Warner Telecom of the Mid-South, and the Tennessee Cable Telecommunications Association ("Intervenor") and, more specifically, their counsel, John M. Farris, to appear at the Hearing Room of the Tennessee Regulatory Authority, and show cause, if cause there be, under T.C.A. 65-2-106, why sanctions should not be imposed upon the intervenors and/or their counsel, Mr. Farris, for violation of the Protection Order entered in this cause.

In support of this Motion, the Applicant and Joint Petitioners state the following:

- 1) On April 20, 2000, the Tennessee Regulatory Authority ("TRA") entered an Order providing protection to certain confidential information of all parties including the Applicant and Joint Petitioners in this matter. (A copy of the Protective Order is attached as Attachment 1)
- 2) On or about April 29, 2000, certain documents were produced at the request of counsel for the Intervenors, Time Warner Telecom of the Mid-South, L.P., Time Warner Communications of the Mid-South, and Tennessee Telecommunications Association. Included among those documents was certain personal financial information of Alex Lowe. That information, along with other information, was clearly designated as confidential pursuant to the Protective Order.
- 3) On May 1, 2000, Intervenors filed a Motion to Lift Protective Order and specifically identified the "Alex Lowe Financial Statement 12/31/99" as one of the documents for which the lifting of the Protective Order was requested.
- 4) The Tennessee Regulatory Authority considered the Motion to Lift Protective Order at the Hearing on July 17, 2000, and denied the Motion (Transcript of proceedings Monday, July 17, 2000, at pages 6 through 8) (A copy of those pages of the Transcript is attached as Attachment 2)
- 5) A second motion to Lift Protective Order was filed by the same Intervenors on September 21, 2000, and that Motion was denied by the Tennessee Regulatory Authority at a hearing on September 26, 2000.
- 6) At no time during the TRA proceedings has any action taken place that is inconsistent with the confidential status of personal financial information.

7) It has come to the attention of counsel for the Applicant and Joint Petitioners that a statement was quoted in an article in the *Memphis Business Journal* of October 6, 2000, that pertains to financial matters of Alex Lowe. Without confirming or denying the correctness of the statement contained in the newspaper article, information regarding Mr. Lowe's personal financial situation has only been disclosed in the form of confidential documents protected by the Protective Order in this TRA proceeding. (A copy of the article from *Memphis Business Journal* is attached as Attachment 3 to this document)

8) Disclosure of information produced under seal and subject to the Protective Order is in violation of the Protective Order.

9) The free exchange of information to adverse parties and to the Authority depends upon the assurance that confidential information will be treated as confidential by all parties. When a violation occurs, appropriate sanctions should be imposed.

WHEREFORE, premises considered, Applicant and Joint Petitioners request:

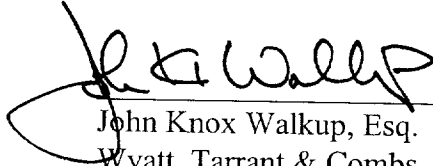
1) That the Intervenors, and specifically their counsel, John M. Farris, be ordered to appear and show cause in the Hearing Room of the Tennessee Regulatory Authority, if cause there be, under T.C.A. 65-2-106, why they should not be found to be in violation of the Protective Order entered in this proceeding.

2) If a violation is found, that appropriate sanctions be imposed in this proceeding, including but not limited to the following:

- a) dismissal of the intervention of these Intervenors;
- b) attorney fees and costs;
- c) appropriate penalties or fines;

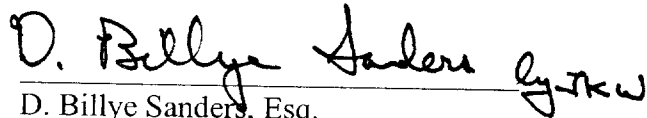
- d) damages for injuries to the parties involved and to the TRA as the tribunal whose orders were not obeyed; and
- e) such other relief as is appropriate.

Respectfully submitted,



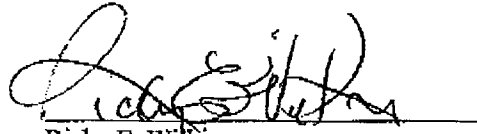
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Attorney for A&L and
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Attorney for MLGW and
Memphis Networx, LLC

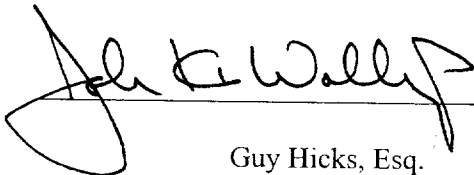


Ricky E. Wilkins
Burch, Porter and Johnson
130 North Court Avenue
Court Square Office
Memphis, TN 38103-2217
(901) 524-5000

Attorney for Memphis Networkx, LLC

CERTIFICATE OF SERVICE

I, John Knox Walkup, hereby certify that on this 12th day of October, 2000,
a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail
postage prepaid to the Counsel of Record listed below.

 _____, Esq.

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Bass, Berry & Sims
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Attorney for Concord Telephone
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Telephone Company, Tellico Telephone
Company, Inc., and Tennessee Telephone
Company

Vance L. Broemel, Esq.
Consumer Advocate Division
Office of the Attorney General
& Reporter
Cordell Hull Building
425 5th Avenue North
Nashville, Tennessee 37243-0500
Consumer Advocate Division

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: APPLICATION OF MEMPHIS)
NETWORK, LLC FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE INTRASTATE)
TELECOMMUNICATIONS SERVICES)
AND JOINT PETITION OF MEMPHIS)
LIGHT GAS AND WATER DIVISION,)
A DIVISION OF THE CITY OF MEMPHIS,)
TENNESSEE ("MLGW") AND A&L)
NETWORKS-TENNESSEE, LLC ("A&L"))
FOR APPROVAL OF AGREEMENT)
BETWEEN MLGW AND A&L REGARDING)
JOINT OWNERSHIP OF MEMPHIS)
NETWORK, LLC)

DOCKET NO. 99-00909

PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes regarding confidentiality of the material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Regulatory Authority ("TRA") hereby orders that:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential research, development, financial statements or other

commercially sensitive information, and which has been specifically designated by the producing party. A "Producing Party" is defined as the party creating the Confidential Information as well as the party having actual physical possession of Information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order, and shall be stored, protected, and maintained at the law offices of parties' counsel of record until such time that said material shall be returned, as provided for in Paragraph 17. Documents containing CONFIDENTIAL INFORMATION shall be specifically marked as confidential on the cover. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 12 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties who are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be used only for the purposes of this proceeding, and shall be expressly limited and strictly disclosed to the following persons:

- PRK.20.0000 7.4241 WHITE (P.0001) & C.00185 NO. 534 P. 4/11
- (a) counsel of record for the parties and other legal counsel, including in-house counsel, for the parties in this case and associates, secretaries, paralegals, and witnesses or consultants actively engaged in assisting counsel of record in this and the designated related proceedings;
 - (b) TRA Directors and members of the staff of the TRA.

Under no circumstances shall any CONFIDENTIAL INFORMATION or copies thereof, be disclosed to or discussed with anyone associated with the marketing of products, goods or services in competition with the products, goods or services of the producing party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION produced by another party to their respective clients, or to any other person or entity that does not have a need to know for purposes of preparing for or participating in this proceeding. Whenever an individual, other than counsel, is designated to have access, then notice (by sending a copy of the executed affidavit) must be given to adversary counsel prior to the access being given to that individual and that individual, prior to seeing the material, must execute an affidavit that the information will not be disclosed and will not be used other than in this proceeding.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, the counsel representing the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient employee or associate counsel who shall be bound by the terms of this Order.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing the documents this failure shall not constitute a waiver of confidentiality, provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. An inadvertent failure to designate a document as CONFIDENTIAL, shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and the failure is not discovered in time to provide a five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing conference or at the Hearing on the merits may request designation of the documents as CONFIDENTIAL, and if the motion is granted by the Pre-Hearing Officer, Administrative Law Judge or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Tennessee Regulatory Authority, the Pre-Hearing Officer or Administrative Law Judge may also, at his or her discretion, either before or

during the Pre-Hearing conference or Hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained with the Executive Secretary of the TRA in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA, Pre-Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL without obtaining an order of the TRA, Pre-Hearing Officer or Administrative Law Judge, provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the Hearing of this proceeding and offered into evidence used in any hearing related to this action, subject to the Tennessee Rules of Evidence and to such future orders as the TRA, the Pre-Hearing Officer, or the Administrative Law

Judge may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL shall inform the producing party and the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, prior to the Hearing on the merits of the case in the manner designated previously in this Order, of the proposed use; and shall advise the TRA, the Pre-Hearing Officer, or the Administrative Law Judge, and the producing party before use of the information during witness examinations so that appropriate measures can be taken by the TRA, the Pre-Hearing Officer, or the Administrative Law Judge to protect the confidential nature of the information.

9. Except for documents filed with the Executive Secretary of the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting party's counsel of record and returned to the producing party pursuant to Paragraph 17 of this Order.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of the party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to

APR. 20, 2000 7:45AM WHITE THROAT & CURBS 10:00
this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose the information.

11. Joint petitioner, Memphis Light Gas & Water Division ("MLG&W"), is a local governmental entity. As a governmental entity, certain documents and records of MLG&W may be subject to public inspection as public records as required by applicable State law. Nothing contained herein shall be construed as a reclassification of any such public document, and the "Confidential" designation of any such document shall not affect its classification as a public record for the purposes of a public records request made pursuant to applicable procedures and state law.

12. Any party may contest the designation of any document or information as CONFIDENTIAL by filing a Motion with the TRA, Pre-Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents, information or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL, however, shall be maintained as such until the TRA, the Pre-Hearing Officer, the Administrative Law Judge or a court orders otherwise. A Motion to contest must be filed not later than ten (10) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than five (5) days prior to the Hearing on the Merits and shall be presented to the Authority at the Hearing on the merits for a ruling.

13. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality. Nothing in this Order is intended to limit or expand the statutory authority of the Attorney General or the Consumer Advocate Division as expressed in T.C.A. § 10-7-504(a) titled *Confidential Records*, and T.C.A. § 65-4-118 titled *Consumer Advocate Division*.

14. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness. A non-party witnesses' designation of information as CONFIDENTIAL may be challenged under Paragraph 12 of this Order.

15. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

16. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

17. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL and all copies thereof shall be returned to counsel for the party who produced (or originally created) the

filings, exhibits and other materials, within fifteen (15) days. Counsel who received the filings, exhibits and other materials, designated as CONFIDENTIAL shall certify to counsel for the producing party that all the filings, exhibits and other materials, plus all copies or extracts from the filings, exhibits and other materials, and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the producing party.

18. After termination of this proceeding, the provisions of this Order relating to the confidential nature of CONFIDENTIAL DOCUMENTS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified.

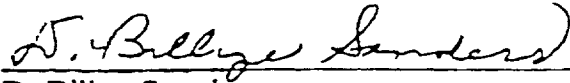
19. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

Richard Collier, Pre-Hearing Officer

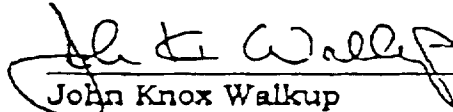
ATTEST:

K. David Waddell, Executive Secretary

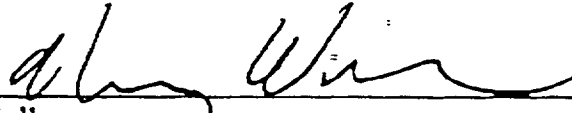
APPROVED FOR ENTRY:



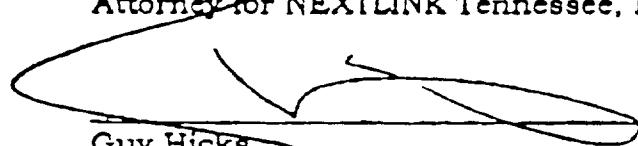
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Attorney for Memphis Network, LLC and
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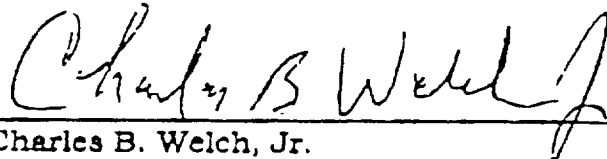
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Henry Walker
Attorney for NEXTLINK Tennessee, LLC



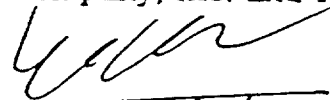
Guy Hicks
Attorney for BellSouth Telecommunications, Inc.



Charles B. Welch, Jr.
Attorney for Time Warner Telecom of the
MidSouth, L.P., Time Warner
Communications of the MidSouth, L.P. and
Tennessee Cable Telecommunications Association



R. Dale Grimes
Attorney for
Concord Telephone Exchange, Inc., Humphreys
County Telephone Company, Tellico Telephone
Company, Inc. and Tennessee Telephone Company



Lee J. Blount, Esq.
Attorney for ISEW 1288

AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned, being duly sworn, deposes and says:

1. I am employed or retained by _____, who is a party in Docket No. 99-00909.

2. I have read the Protective Order of the Tennessee Regulatory Authority dated _____, 2000 respecting disclosure of Confidential Information. I agree to be bound by the terms thereof, including the requirements that the information not be disclosed and not be used other than in this proceeding and I understand that unauthorized disclosure of Confidential Information constitutes a violation of the Order and may subject me to an action for injunctive relief and/or damages.

FURTHER AFFIANT SAITH NOT.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2000.

NOTARY PUBLICMy Commission Expires:
_____43144197.1
3/28/00 5:17 PM

Networkx hearings resume with Time Warner witnesses

BY ED HICKS

A Memphis Light, Gas & Water employee is expected to be a key witness in Time Warner's case against the utility's effort to operate as a local phone company when hearings before the Tennessee Regulatory Authority resume Oct. 16.

The MLGW employee — one of three key witnesses for Time Warner — is expected to give testimony that will show that the utility company and its partner have broken all the rules for entering the competitive telecommunications market.

However, Memphis Networkx, the company formed by MLGW and Kansas-based A&L Networks Tennessee — its partner in the proposed \$150 million telecommunications venture — says the cable giant is trying to obstruct legitimate competition in its Memphis market.

TRA's mission is to promote the public interest by balancing the interests of utility consumers and providers while facilitating the transition to a more competitive environment. The TRA must decide whether MLGW's plans to move into telecommunications serve this interest.

MLGW did a lot of things intentionally to thwart the rules and the laws," says Carolyn Marek, vice-president of Time Warner Telecommunications of the Mid-South.

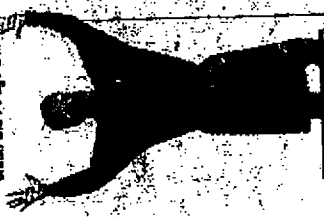
Her company is not a subsidiary of Time Warner Inc., which intervened in the case along with the Tennessee Cable Association, XO for-merly Nextlink, BellSouth Corp. and the local

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FASHION SENSE:

Clothing consultant makes house calls.

Small Biz / Page 21



THE NEW REGIME:

John Calipari set to make debut with U of M.

College Basketball / Page 25



SETTING IT THERE:

Transport future tied to versatility of intermodal.

Freights / Page 31

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HEARINGS: MLGW, Time Warner exchange barbs in dispute over legal issues of Networkx plans

FROM PAGE ONE

chapter of the International Brotherhood of Electrical Workers. BellSouth has since dropped out of the process.

"The public's interest has been abused by Time Warner," says Ward Huddleston, Networkx chief manager.

The case revolves around nine legal issues approved for review by the TRAC. These issues focus on whether MLGW's proposed plans include sufficient financing, sufficient managerial expertise and sufficient provisions for preventing cross-subsidy.

The cross-subsidy issue arises because the utility is not allowed to use money from its non-profit arm to fund its for-profit venture except in the form of a loan.

The intricacies of the case are complicated by key decisions made outside of public view and by the relationship of MLGW and the vendor who ultimately got the contract for the telecommunications project.

A&L Networks-Tennessee is represented in Memphis by Alex Lowe, a large shareholder in the company. A&L Networks is a subsidiary of A&L Underground, which received a \$10 million contract with the City of Memphis in 1995 to install electric and water lines and conduit not suitable for telecommunications services. That contract has been renewed each year since, bringing its present value to about \$40 million.

Before the telecommunications contract was awarded in 1999, Lowe laid other conduit in subdivisions in Collierville and Germantown — conduit suitable for telecommunications services.

Time Warner attorney John Farris says this act implies that Lowe knew the contract was his and that the city's public Request for Proposals would be merely a front. To bolster his argument, Farris

first witness will be Wade Stinson, a vice-president at MLGW and member of the committee that recommended Lowe's company for the telecommunications project.

Farris says that Stinson, while still the service director in MLGW's Hickory Hill branch office, was approached by his friend Lowe with the idea of a telecommunications venture with the utility. Farris says it was Stinson who brought the idea to MLGW senior vice-president and COO Larry Thompson. Thompson oversees the Networkx project for MLGW. He was out of town, and not available for comment on this story.

The utility sent out its RFP for the telecommunications project to more than 100 potential vendors, but only a handful responded. Farris says that's because the other vendors could not present the kind of proposal they needed in the 45-day period allowed.

He says that because of his ongoing work at MLGW, Lowe had six months or more to prepare his proposal, and that during that time he interviewed employees, inventoried the assets of the company and reviewed all its contracts.

Charlotte Knight-Griffin, manager of MLGW's legal department, says all the other respondents were allowed the same access as Lowe within the time frame allowed in the RFP. She says although Lowe had earlier laid the telecommunications conduit with the utility's permission, he did so at his own risk. If he did not get the contract, he lost money on the conduit investment.

Farris says no good businessman would have taken such a risk.

Huddleston says it doesn't make sense that the utility would have favored one vendor over another.

"MLGW didn't have to do an RFP at all," Huddleston says. "They made a decision to try to get the very best part-

ner they could have."

Selecting a vendor was rightfully a management decision, Huddleston says.

Farris says that the utility ordered an RFP in order to bolster its own case for A&L Networks and to win the approval of the board of commissioners, which oversees the utility.

Though the commissioners ultimately approved the project and the selection of A&L Networks, none of the board's minutes reflect a discussion of the issues. Networkx-related actions were approved as part of the overall agenda rather than as a separate item.

"The commissioners do their job in advance, just like a lot of people do their homework," Huddleston says. "The minutes don't reflect all the pre-work that is done."

Farris believes that in its rush to align itself with Lowe's company — a rush precipitated by Mayor Willie Herenton's expressed wish to sell off MLGW — the utility did not select a telecommunications partner with sufficient managerial expertise. Nor does A&L Networks have sufficient financial wherewithal, Farris says.

"Lowe's net worth is \$1.5 million," Farris says. "The project is \$150 million. Who is putting up the collateral? The rate payers."

Huddleston would not comment on Lowe's worth, saying that information was submitted under seal and any disclosure would violate a court order.

In its most recent budget, Memphis City Council approved a \$20 million loan for Networkx as part of a single-line budget request, without public comment or discussion by council. While MLGW says it briefed members of council individually, some members say the item was slipped by them.

Huddleston says the issue is whether the utility is cross subsidizing — which

would be illegal.

"Start-up costs are necessary in starting any business," Huddleston says. "You don't cross-subsidize an investment."

In early 1999 it looked as though Networkx and Time Warner, by Huddleston's measure the most aggressive of the intervenors, would settle their differences. Networkx initially said it would be a carrier's carrier and would not provide end-user services.

When it changed its position — at the same time Farris learned of the conduit laid in the subdivisions — Time Warner dropped out of the negotiations.

As a provider of services to end users, Networkx could provide video on demand in direct competition with Time Warner.

If Networkx had agreed not to go for the end-user market as Time Warner wanted, there would have been a possible violation of the Sherman Anti-Trust Act, Huddleston says.

Ed Horrell, a telecommunications consultant and adviser to MLGW, says Networkx will benefit the city. He says the partnership sets a precedent because it's the only time a public utility and private-sector partner have teamed up for a telecommunications project and stayed together through the process.

Huddleston says Networkx will be a leader, one of the first next-generation networks. He says his company will have its own employees and contractors, and that everything will be structurally separate from its corporate owners in Kansas. He says Networkx will have the same high standards as MLGW.

"Time Warner's main concern is losing customers, and they should be afraid," Huddleston says. "Their prices are high and their service is poor."

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